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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/368,422	08/05/1999	JAMES R. MYERS	JRM0001	5509

27510 7590 11/03/2003  
KILPATRICK STOCKTON LLP  
607 14TH STREET, N.W.  
SUITE 900  
WASHINGTON, DC 20005

EXAMINER

FELTEN, DANIEL S

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 11/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/368422

Applicant(s)

Myers

Examiner

Feiten

Art Unit

3524

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01/17/2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-12, 17-22 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-12, 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

## DETAILED ACTION

1  
2 1. The petition under 37 CFR 1.181(a) to withdraw holding of abandonment filed January  
3 17, 2003 under Paper No. 11 has been accepted. The examiner hereby rescinds the  
4 abandonment filed January 10, 2003. Receipt of the response to the restriction requirement  
5 also filed January 17, 2003 electing Group I (claims 1-6, 8-12 and 16-22) is also  
6 acknowledged. Claims 1-6, 8-12 and 16-22 are considered within this office action from the  
7 amendment filed under Paper No. 5 on March 13, 2002.

### *Response to Arguments*

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10  
11 2. Applicant's arguments with regard to claims 1-6 and 8-12 filed March 13, 2002 have  
12 been fully considered but they are not persuasive

13  
14 Applicant has maintained that does not disclose that the dealer's CSI is used in any to  
15 assess risk of default and/or late payment by an individual car buyer and that claim 1 is  
16 directed to the user of the OEM evaluation of the supplier as a part of determining risk of  
17 default and/or late payment by a borrower. The examiner is not arguing this point, but in fact  
18 what was trying to be expressed by the previous office action that it is obvious that the

1 Decision Flex system determines the risk of default and/or late payment by a borrower (see  
2 col. 5, ll. 64 to col. 6, ll. 18). Taking into consideration that Andersen also teaches that an  
3 evaluation is made by a manufacturing company using CSI to determine how profitable and/or  
4 effective a dealership is, it would be obvious for an artisan of ordinary skill in the art to  
5 modify/integrate within the Decision Flex system borrowers that are suppliers (i.e., car  
6 dealers, car rental companies, moving van companies) to provide a means for increased level  
7 of business/profitability between manufactures and suppliers. Thus such a modification would  
8 be an obvious expedient well within the ordinary skill in the art.

9  
10  
11 *Claim Objections*

12 3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the  
13 original numbering of the claims to be preserved throughout the prosecution. When claims are  
14 canceled, the remaining claims must not be renumbered. When new claims are presented, they  
15 must be numbered consecutively beginning with the number next following the highest  
16 numbered claims previously presented (whether entered or not).

17 Misnumbered claims 17-23 been renumbered 16-22.  
18

19 4. Claims 17-22 are objected to because of the following informalities:

20 Re claim 17: Delete "claim 17" and substitute --claim 16--.

1 Re claim 18: Delete "claim 18" and substitute --claim 17--.

2 Re claim 19: Delete "claim 18" and substitute --claim 17--.

3 Re claim 20: Delete "claim 18" and substitute --claim 17--.

4 Re claim 21: Delete "claim 19" and substitute --claim 18--.

5 Re claim 22: Delete "claim 19" and substitute --claim 18--.

6  
7 Appropriate correction is required.

8  
9  
10 ***Claim Rejections - 35 USC § 101***

11 5. 35 U.S.C. 101 reads as follows:

12 Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any  
13 new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this  
14 title.  
15

16 6. The claimed invention is directed to non-statutory subject matter. The limitations  
17 which reside within the body of claims 1-6, 8-12 and 16-22 in particular, are directed to  
18 nothing more than abstract ideas which are equivalent to human making mental computations  
19 that are not tied to any technological art and not considered a useful art as contemplated by the  
20 United States Constitution. The abstract idea(s) presented in the body of the claim(s) does not  
21 become a technological art merely by the recitation in the preamble of "a method of

1 determining risk of default..." (see Ex parte Bowman, 61, USPQ2d 1669, 1671 (Bd. Pat. App  
2 & Inter. 2001).

3  
4  
5 ***Claim Rejections - 35 USC § 112***

6 7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

7 The specification shall conclude with one or more claims particularly pointing out and distinctly claiming  
8 the subject matter which the applicant regards as his invention.

9 8. Claims 1-6 and 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being  
10 indefinite for failing to particularly point out and distinctly claim the subject matter which  
11 applicant regards as the invention.

12 Re claim 1: the limitation of "potential borrower" is indefinite because it is uncertain  
13 whether the supplier is or is not a borrower.

14  
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16  
17 ***Claim Rejections - 35 USC § 103***

18 9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all  
19 obviousness rejections set forth in this Office action:

20 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in  
21 section 102 of this title, if the differences between the subject matter sought to be patented and the prior art  
22 are such that the subject matter as a whole would have been obvious at the time the invention was made to a

1 person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be  
2 negated by the manner in which the invention was made.

3  
4 10. Claims 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen  
5 et al ('Andersen', US 5,774,883).

6 Decision Flex system determines the creditworthiness risk of a borrower (see col. 5, ll.  
7 64 to col. 6, ll. 18). Taking into consideration that Andersen also teaches that an evaluation is  
8 made by a manufacturing company using CSI to determine how profitable and/or effective a  
9 dealership is, it would be obvious for an artisan of ordinary skill in the art to modify/integrate  
10 within the Decision Flex system borrowers that are suppliers (i.e., car dealers, car rental  
11 companies, moving van companies) to provide a means for increased level of  
12 business/profitability between manufactures and suppliers. Thus such a modification would be  
13 an obvious expedient well within the ordinary skill in the art.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ***Daniel S. Felten*** whose telephone number is (703) 305-0724. The examiner can normally be reached between the hours of 7:00AM to 5:30PM Monday-Thursday. Any inquiry of a general nature relating to the status of this application or its proceedings should be directed to the Customer Service Office (703) 306-5631, or the examiner's supervisor ***Vincent Millin*** whose telephone number is (703) 308-1065.

12. Response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

for formal communications intended for entry, or (703) 305-0040, for informal or draft communications, please label "Proposed" or "Draft".

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to *[daniel.felten@uspto.gov]*.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly



Serial Number: 09/368,422

Applicant(s): Myers (705/35)

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Representative: Marcou (33,014)

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1 signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly  
2 set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and  
3 Trademark on February 25, 1997 at 1 195 OG 89.  
4  
5

6 

7 DSF

8 October 29, 2003



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